

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

FELICITY M. TODD VEASEY and
SECOND AMENDMENT
FOUNDATION, INC.,

Plaintiffs,

v.

BRINDELL B. WILKINS, JR., in his
official capacity as Sheriff of Granville
County, North Carolina,
PAT McCRORY, in his official capacity
as Governor of North Carolina,
ROY COOPER, in his official capacity
as Attorney General of North Carolina,
and FRANK L. PERRY, in his official
capacity as Secretary of the North
Carolina Department of Public Safety,

Defendants.

No. 5:14-cv-00369-BO

KIRSTEN MESSMER,

Plaintiff,

v.

DONNIE HARRISON, in his Official Capacity
as Sheriff of Wake County, North Carolina,
PAT McCRORY, in his Official Capacity as
Governor of North Carolina, ROY COOPER, in
his Official Capacity as Attorney General of
North Carolina, and FRANK L. PERRY, in his
Official Capacity as Secretary of the North
Carolina Department of Public Safety,

Defendants.

No. 5:15-cv-00097-BO

MEMORANDUM OF LAW IN SUPPORT OF
SHERIFF BRINDELL B. WILKINS, JR.'S AND SHERIFF DONNIE HARRISON'S
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

STATEMENT OF FACTS

The Court will recall that these actions are constitutional challenges to N.C.G.S. § 14-415.12(a), the state statute prohibiting non-citizens from applying for concealed carry permits.

On August 5, 2015, Governor McCrory signed legislation repealing the challenged citizenship requirement of N.C.G.S. § 14-415.12(a). Exhibit A, Session Law 2015-195 at § 17. The legislation became effective upon the Governor's signature. *Id.* at § 18.

The new state law expressly allows non-citizens to obtain a concealed carry permit if they have "been lawfully admitted for permanent residence as defined in 8 U.S.C. 1101(a)(20)." *Id.* at § 17. Plaintiffs Felicity M. Todd Veasey and Kirsten Messmer have both been lawfully admitted for permanent residence as defined in 8 U.S.C. 1101(a)(20). [5:14-cv-00369, DE 53; 5:15-cv-00097, DE 34]. Thus, under the new state law, the State of North Carolina no longer prohibits them from obtaining a concealed carry permit.

ARGUMENT

THE CASES SHOULD BE DISMISSED AS MOOT BECAUSE THE LEGISLATURE HAS REPEALED THE CHALLENGED STATE LAW.

It is well-settled that when a legislature amends or repeals a challenged law, the case challenging the prior law is moot. *See United States Dep't of the Treasury v. Galioto*, 477 U.S. 556, 559-60 (1986) (holding that an equal protection challenge to federal firearms statute was moot after Congress amended the statute to eliminate the discriminatory provision); *see also, e.g., Princeton Univ. v. Schmid*, 455 U.S. 100, 103 (1982) (per curiam); *Brooks v. Vassar*, 462 F.3d 341, 348 (4th Cir. 2006).

These actions are constitutional challenges to the citizenship requirement of N.C.G.S. § 14-415.12(a). The new state law repealed that citizenship requirement. *See* Exhibit A, Session Law 2015-195. Accordingly, these cases are moot.

CONCLUSION

For the foregoing reasons, Defendants Brindell B. Wilkins, Jr. and Donnie Harrison respectfully request that the Court dismiss the above-captioned actions for lack of subject matter jurisdiction.

Respectfully submitted the 7th day of August, 2015.

POYNER SPRUILL LLP

By: s/ Andrew H. Erteschik
Andrew H. Erteschik
N.C. State Bar No. 35269
aerteschik@poynerspruill.com
P.O. Box 1801
Raleigh, NC 27602-1801
Telephone: 919.783.2895
Facsimile: 919.783.1075

**COUNSEL FOR SHERIFF
BRINDELL B. WILKINS, JR. AND
SHERIFF DONNIE HARRISON**

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel and parties of record as follows:

Camden R. Webb
Williams Mullen
301 Fayetteville St., Suite 1700
P. O. Box 1000
Raleigh, NC 27601
*Counsel for Plaintiff Kirsten Messmer
Local Rule 83.1 Counsel for
Plaintiffs Felicity M. Todd Veasey and
Second Amendment Foundation, Inc.*

Hal F. Askins
J. Joy Strickland
N.C. Dept. of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
*Counsel for Defendants Governor Pat
McCrary, Attorney General Roy
Cooper and Frank L. Perry*

David G. Sigale
Law Firm of David G. Sigale, P.C.
739 Roosevelt Road, Suite 304
Glen Ellyn, IL 60137
dsigale@sigalelaw.com
*Lead Counsel for Plaintiffs Felicity M.
Todd Veasey and Second Amendment
Foundation, Inc.*

This the 7th day of August, 2015.

s/ Andrew H. Erteschik
Andrew H. Erteschik